



U.S. Citizenship  
and Immigration  
Services

34

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: OCT 07 2004

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**PUBLIC COPY**

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a bail bond and pawnshop. It seeks to employ the beneficiary as an accountant. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary did not meet the education required by the labor certification.

On appeal, counsel provides a brief and additional evidence.

In pertinent part, Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 25, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of accountant. In the instant case, item 14 describes the college degree required as bachelors plus two years of experience or MBA. The major field of study must be business administration, finance, or accounting. Item 15 listed no requirements.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submitted a copy of a certificate of graduation from Honam University in Korea that reflects February 25, 1991 as the date of the beneficiary's graduation with a Bachelor of Business Administration degree. The petitioner also provided a copy of a certificate of graduation from Azusa Pacific University, Azusa, California that reflects December 17, 1999 as the date of the beneficiary's graduation with a Master of Business Administration degree.

The director noted that the academic record submitted as proof of the beneficiary's Master of Business Administration degree reflected a different birth date and high school graduation date than the records from Honam University in Korea. On July 17, 2003, the director requested additional evidence pertinent to the beneficiary's Master of Business Administration degree to include an original amended transcript issued by

the same issuing agency and to include evidence such as the beneficiary's student records, identification card, and quarterly grade reports.

In response, counsel requested additional time and stated:

We would request an extension of time or to hold the file in abeyance while the Beneficiary is working with Azusa Pacific University to correct the administrative error. The Bureau request for evidence is the first time that anyone realized that there was a discrepancy in the record. For some reason, the wife's date of birth and high school graduation dates is listed on Beneficiary's transcript. The social security number and other identifying information on the transcripts are those of the Beneficiary. However, due to the time involved in correcting the records, it was not possible to complete the request and provide by the deadline provided in the blue notice. Therefore, as soon as it is available, the requested information will be submitted.

The director denied the petition on November 18, 2003 noting that CIS may not grant additional time to respond to a request for evidence. *See* 8 C.F.R. § 103.2(b)(8).

On appeal, counsel submits an original and certified, amended transcript of the beneficiary's Master of Business Administration degree from Azusa Pacific University. The transcript shows the beneficiary's date of birth to be the same as listed on the degree from Homan University and on the Form I-140, Immigrant Petition for Alien Worker. The transcript also contains the seal of the University.

Ordinarily, where the petitioner is notified and has a reasonable opportunity to address the deficiency of proof, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceeding before Citizenship and Immigration Services. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). However, in this case, it is noted that the petitioner was given until October 9, 2003 to respond and the director received the amended transcript on October 23, 2003. It appears that both the petitioner and beneficiary made every effort to correct the discrepancy and respond on time and should not now be penalized by having to file another petition when it is clear that the beneficiary meets the requirements of the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained and the petition approved.